REMARKS

1. Applicant thanks the Examiner for his remarks and observations, which have greatly assisted Applicant in responding.

2. Claim 1 stands rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,208,373 ("Fong"). Claim has been cancelled from the Application. Therefore, the rejection of claim 1 under 35 U.S.C. § 102(e) is rendered moot.

3. Claims 2-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fong in view of Shashua. Applicant respectfully disagrees. To establish a *prima facie* case of obviousness, the Examiner must meet three criteria: (1) the Examiner must identify a proper motivation to combine or alter the references; (2) the Examiner must demonstrate a reasonable expectation of success from the combination; and (3) the combination must teach or suggest all features of the claimed invention. MPEP § 2143.

Even if the combination taught all features of the claimed invention, it would be improper because the Examiner has not identified a proper motivation to combine the references. Applicant previously argued that the combination of Fong and Shashua is an improper hindsight construction. Applicant hereby incorporates by reference its comments relating the current rejection to the facts described in *Monarch Knitting Mach. Corp. v. Sulzer Morat GmBH*, 139 F.3d 877 (Fed. Cir. 1998). In rebuttal, the Examiner cites a rule from *In re McLaughlin*, 443 F.2d 1392 (CCPA 1971). However, legal precedent can provide the rationale supporting obviousness only if the facts of the case are sufficiently similar to those in the Application. MPEP § 2144. Because the Examiner has failed to make a showing that the facts of *In re McLaughlin* bear any similarity to those in the Application, his reliance in legal precedent is misplaced.

Additionally, the Examiner attempts to use the *Mclaughlin* rule as a *per se* rule of obviousness, which is not consistent with the law. *Ex Parte Granneman*,

68 USPQ2d 1219, 1220-21 (B.P.A.I. 2003). In that case, the Board found that the Examiner had failed to compare the facts in a cited case with those in the case at hand and explain why the legal conclusion in the case at hand should be the same as the one in the cited case. The Board found that, instead, the Examiner had relied upon the cited case as establishing a *per se* rule of obviousness. The Board, quoting *In re Ochiai*, 71 F.3d 1565 (Fed. Cir. 1995), declared that "reliance on *per se* rules of obviousness is legally incorrect and must cease." Just as in *Granneman*, the Examiner relies on the *McLaughlin* rule as a *per se* rule of obviousness, failing completely to analogize the facts of the two cases and explain why the *McLaughlin* rule should apply here. Therefore, the Examiner has failed to effectively rebut Applicant's argument that he used improper hindsight in making the combination of Fong and Shashua. Thus, he has not identified a proper motivation for making the combination.

The Examiner has also failed to demonstrate a reasonable expectation of success from the combination. On these grounds alone, the current rejection is improper.

Claim 3: The Examiner continues to rely, incorrectly, on col. 5, lines 56-62 as teaching combining "at least two interpolated images." Instead, in these lines, Shashua is describing "averaging pixel by pixel the real images 1 and 2." (emphasis added) That is, Shashua describes averaging two unprocessed images, not interpolated images: "The present invention provides a method and apparatus for generation of virtual images based on reprojection of real images of a scene." Col. 2, line 66-67, emphasis added. "The present invention provides a method and apparatus of synthesizing a virtual image of a scene based on a plurality of "model" real images of the scene[.]" Col. 3, line 1-3, emphasis added. "A system . . . in accordance with the invention can synthesize a virtual image . . . based on a plurality of real "model" images of the scene . . . ." Col. 4, line 23-35, emphasis added. There is no teaching or suggestion whatsoever in Shashua that the model images undergo any type of processing or transformation prior to being averaged to produce a virtual image. In stark contrast, claim 3 describes "combining at least two of said interpolated images by using an averaging

scheme to create said composite image." There is no teaching or suggestion in Shashua of combining at least two interpolated images by using an averaging scheme to create said composite image. Fong adds nothing to the teaching of Shashua. Therefore, there is no teaching or suggestion in the combination of combining at least two of said interpolated images . . ., rendering the subject matter of claim 3 patentably distinct from the combination of Fong and Shashua.

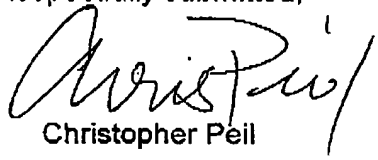
Applicant adds new claim 8 to the Application that incorporates the subject matter of claims 2 and 3, shown to be allowable over the art of record. Claims 2 and 3 have been cancelled from the application. The remaining dependents are amended to correct their dependencies in view of the cancellation of claims 2 and 3.

Applicant makes the above amendments for reasons unrelated to patentability. Rather such amendments are made to describe the invention more clearly with the intention of advancing prosecution of the Application. The above amendments to do not signify Applicant's agreement with the Examiner's position. Nor does Applicant intend to sacrifice claim scope as a result of the amendments. Applicant expressly reserves the right to pursue patent protection of a scope it reasonably believes it is entitled to in one or more continuing applications.

CONCLUSION

In view of the foregoing, the application is deemed to be in allowable condition. Therefore, Applicant earnestly requests reconsideration and prompt allowance of the claims, allowing the application to pass to issue as a United States Patent. Should the Examiner deem it helpful, he is urged to contact Applicant's attorney at 650-474-8400.

Respectfully submitted,



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